IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 145 of 1996

Date of Decision : 9.10.2007

Amro Devi & others …Appellants.

v.

Kanshi Ram and another …Respondents.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants: Mr. Vikram Thakur, Advocate vice Mr. Vijay Thakur, Advocate.

For respondent No.1. Mr. Ajay Kumar, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment and decree dated 4.3.1996 passed by the District Judge, Hamirpur in Civil Appeal No. 91 of 1991 titled as Kanshi Ram v. Rajjan Devi and others, reversing the judgment and decree dated 25.5.1991 passed by the Sub Judge Ist Class(I) , Hamirpur in Civil Suit No. 106/87 titled as Rajjan Devi & others v. Kanshi Ram. The first Appellate Court has dismissed the suit filed by the plaintiffs.

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

For the purposes of convenience, the appellants are referred to as 'the plaintiffs' and the respondents are referred to as 'the defendants'.

The present appeal has been admitted on the following substantial question of law:-

> "4) Whether the respondent-defendant is entitled for benefit for the stray entry appearing in the jamabandi for the year 1981-82 or not?"

The plaintiffs filed a suit for declaration and injunction claiming ownership of the suit land ad measuring 171.70 sq.mtrs., khasra Nos. 58 & 59 situate in Up Mahal Krishan Nagar, Mahal Hamirpur, Mauza Jhaniara, Tehsil & District Hamirpur, H.P. Plaintiffs claimed ownership by succession of their predecessor Shri Raffo Ram tenant of the erstwhile owners, namely, Shri Kanshi Ram and Shri Bhagat Singh. Plaintiffs, in the alternative prayed for a decree of possession. However, they were ultimately found not to be in possession of the suit land.

The suit was resisted on the ground that the defendants continued to be the owners in possession of the suit land since time immemorial and the case is false and incorrect.

The trial Court, based on the pleadings of the parties, framed the following issues:-

1) Whether the plaintiffs are entitled for relief of permanent injunction, as prayed for? …….OPP
2) Whether the suit is barred by time? …OPD
3) Whether the plaintiffs are estopped by their acts and conduct, as alleged? ….OPD

4) Whether suit is bad for non-joinder of necessary parties? …..OPD

5) Whether suit in form 'A' is not maintainable? ..OPD

6) Whether the defendant was tenant over suit land, as alleged? …..OPD

7) If issue No.6 not proved, whether defendant has become owner of suit land by way of adverse possession? ……..OPD

8) Relief."

The suit of the plaintiffs was decreed to the effect that the plaintiffs were owners in possession of the suit land.

Against the said judgment and decree dated 25.5.1991 passed by the trial Court, the plaintiffs filed Civil Appeal No. 91 of 1991. The first Appellate Court, after appreciating the material on record, came to the conclusion that the plaintiffs were not the owners in possession as the plaintiffs and their own witnesses had admitted the defendants' possession in the suit premises since 1947. The first Appellate Court also found the revenue record (jamabandies), produced by the plaintiffs being Ext.P-1,Ext. P-2, Ext.P-3, Ext. P-4, Ext. P-5 Ext. P-6 & Ext. P-7 to be palpably false and incorrect. Since the plaintiffs had failed to plead and prove their dispossession the alternate relief, as prayed for by the plaintiffs was also not considered.

I have perused the record and also the statements of the witnesses. Ext.P-1 jamabandi (revenue record) for the year 1981-82 shows Kanshi Ram and Bhagat Singh to be the

owners by 804/5566 shares. From the revenue record placed on record, it is clear that the land in question is Shamlat. Thus, in view of Ext.P-1 prior revenue entries being Ext.P-2 to P-7 are obviously false and incorrect. From the record, nothing can be shown that the plaintiffs have been in possession of the suit land. On the contrary, as has been rightly found by the first Appellate Court through the version of Shri Pritam Chand (PW-2), Smt. Rajjan Devi (PW-1), Shri Relu Ram (PW-4) and Shri Sita Ram (PW-5), the defendants are in possession of the land.

In my view, the plaintiffs have to stand on their own legs to prove their case of ownership and possession. The first Appellate Court has correctly appreciated the statements of the witnesses as also the material on record and come to its conclusion that the defendants are not in possession of the suit land. Learned counsel for the appellants has submitted that the defendants cannot be given any benefit of stray entry i.e. Ext.P-1. I am not in agreement with the learned counsel for the reasons that Ext.P-1 has been produced by the plaintiffs and it is not the case that the stray entry is as a result of collusion or has been wrongly prepared by the revenue officials. Further, as is evident from jamabandi Ext.P-1, the defendants have been in possession of the suit land for a long. No evidence has been led by the plaintiffs to show that they have been dispossessed from the suit land at any point in time. The land in question was a

Shamlat land and by no means could have been given to predecessor-in-interest of the plaintiffs as tenant.

In view of the aforesaid discussion, I see no reason to set aside the judgment and decree dated 4.3.1996 passed by the first Appellate Court dismissing the suit filed by the plaintiffs. The question of law is answered accordingly. The appeal is dismissed accordingly.

October 9, 2007. **(Sanjay Karol)**
(rana) **Judge.**